

FILED

AUG 12 2003

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT**

MEREDITH LARSON
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1747 Pennsylvania Avenue, N.W.
Suite 300
Washington, D.C. 20006

Plaintiff,

y.

DEPARTMENT OF DEFENSE
Washington, D.C. 20301

Defendant.

* * * * *

CASE NUMBER 1:03CV01721

JUDGE: Paul L. Friedman

DECK TYPE: FOIA/Privacy Act

DATE STAMP: 08/12/2003
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COMPLAINT

This is an action brought pursuant to the Freedom of Information Act, 5 U.S.C. § 552, et seq., and the Privacy Act of 1974, 5 U.S.C. § 552a (collectively "FOI/PA"), by plaintiff Meredith Larson against defendant Department of Defense for its failure to fully disclose records concerning atrocities and human rights abuses committed by the Government of Guatemala.

JURISDICTION

1. This court has both subject matter jurisdiction and personal jurisdiction over the defendant pursuant to 5 U.S.C. §§ 552 (a)(4)(B), 552a (g)(1), and 28 U.S.C. § 1331.

VENUE

2. Venue is appropriate under 5 U.S.C. §§ 552(a)(4)(B), 552a (g)(5), and 28 U.S.C. § 1391.

PARTIES

3. Plaintiff Meredith Larson ("Larson") is a United States citizen, and seeks documents regarding a stabbing attack against her in 1989, as well as threats and bombings against the human rights organization for which she worked in Guatemala City.

4. Defendant Department of Defense ("DoD") is an agency within the meaning of 5 U.S.C. § 552 (f) and is in possession and/or control of the records requested by the plaintiff which are the subject of this action.

BACKGROUND

5. Between 1960 and 1996, Guatemala was engulfed in a civil war in which more than 200,000 people are estimated to have been killed or "disappeared." According to the United Nations-sponsored Guatemalan Commission for Historical Clarification ("CEH") -- which was established in 1994 as part of the U.N.-brokered peace process to investigate and document human rights violations and violence connected with the armed confrontation -- among reported cases, eighty-three percent of the victims of this conflict were Mayan and seventeen percent were *Ladino* (of European or mixed ancestry).

6. The final report of the CEH concluded that "state forces and related paramilitary groups were responsible for 93% of the violations documented by the CEH, including 92% of the arbitrary executions and 91% of forced disappearances. Victims included men, women and children of all social strata: workers, professionals, church members, politicians, peasants, students and academics; in ethnic terms, the vast majority were Mayans."

7. The United States government, particularly through its intelligence agencies and the named defendant in this litigation, has long maintained an interest in Guatemala, which is located in its "strategic backyard." In 1954, the U.S. assisted in the overthrow of the democratically-elected President Jacobo Arbenz, because of its concern about growing strength of the Communist Party and the possible nationalization of foreign companies, particularly the United Fruit Company and US-owned railroads. In the years following the coup, the U.S. government and its agencies were closely allied -- overtly and covertly -- with successive Guatemalan governments. After the overthrow of the Arbenz government, there was a rapid reduction of the opportunity for political expression in Guatemala. Inspired by fundamentalist anti-communism and backed by the U.S., new legislation outlawed the extensive and diverse social movement and consolidated power in the hands of the military and the wealthy who were committed to preserving the status quo. In the mid-to-late 1960s, "death squad" activity became methodical and an intrinsic part of the state-sponsored repression in the country as the U.S. became involved in providing training and weapons to the Guatemalan military and security forces.

8. According to the Historical Clarification Commission, the Guatemalan "death squads" were initially criminal groups made up of private individuals who enjoyed the tolerance and complicity of state authorities, whose actions later became increasingly subject to control of the Army Command. The composition of the death squads varied over time as members of the military were incorporated, until they became, in some cases, authentic clandestine military units.

9. Overt relations between the U.S. and Guatemalan government came under strain in the late 1970s and early 1980s as the Guatemalan army began waging a ruthless scorched-earth campaign against indigenous communities in the Guatemalan highlands (which the army believed protected the growing guerrilla opposition), and after the Carter Administration issued its first annual human rights report on Guatemala. The Guatemalan government responded to the report's negative portrayal of the military's involvement in violations of human rights in the country by refusing pending U.S. military aid.

10. It is now known, however, that despite this apparent strain, the U.S. continued to provide aid to the Guatemalan military through third parties (e.g., Israel and South Africa). Additionally, the U.S. continued to invite Guatemalan military personnel to attend U.S.-based military institutions (e.g., officer training at Staff and Command Colleges, pilot training at the Bell installations in Texas, and training at the U.S.A.R.S.A. -- more commonly referred to as the "School of the Americas"). Overt non-lethal U.S. military aid to Guatemala resumed in 1985, but was suspended again in 1990 -- this time by the U.S. -- following the murder of an American citizen, Michael Devine, by members of the Guatemalan army. Covert assistance to the Guatemalan military and security forces through the defendant CIA continued throughout these years. However, it was stopped in 1995 as a reaction to revelations of possible involvement of CIA operatives in the disappearance and murder of guerrilla leader Efraim Bamaca, the husband of U.S. citizen and attorney, Jennifer Harbury.

11. Throughout the 1980s and into the 1990s, egregious violations of human rights continued, including the murder and "disappearance" of political opponents, as the

violence which reached unbearable proportions in the mid-to-late 1970s intensified and then became somewhat more targeted and systematic in the 1980s and early 1990s.

12. In addition to conducting the widespread “scorched earth” attacks on indigenous communities in the Guatemalan highlands described above, the Guatemalan military and security forces also systematically targeted Catholic clergy, human rights workers, labor organizers and academics, who were subjected to on-going surveillance and attacks.

13. Attacks against members of the Catholic Church began in the mid 1960s, as members of the church began to abandon their traditionally conservative positions based upon the decisions of the Second Vatican Council (1962-1965) and the Episcopal Conference of Medellin (1968), prioritizing work with excluded, poor and under-privileged sectors and promoting the construction of a more just and equitable society. According to the U.N. Historical Clarification Commission report, these doctrinal and pastoral changes clashed with the Guatemalan military’s counterinsurgency strategy, which considered Catholics to be allies of the guerrillas and therefore part of the internal enemy, subject to persecution, death or expulsion. A large number of catechists, lay activists, priests, nuns and missionaries were victims of the violence. This violence against members of the Church continued even after the Peace Accords, when Guatemalan Bishop Juan Jose Gerardi, coordinator of the Human Rights Office of the Archbishop of Guatemala was battered to death by assailants in April 1998 as he returned home. His murder came just two days after he had presided over the public presentation of the Report of the Recuperation of the Historical Memory Project (“REHMI”), which synthesized testimonies collected over three years regarding the tens of thousands of extrajudicial executions and “disappearances” suffered by unarmed civilians during the

conflict in Guatemala. Three military officers (including members of former President Alvaro Arzu's private security detail) were subsequently convicted for having planned and executed Gerardi's murder.

14. Human rights workers have also been repeatedly and systematically subjected to repression in Guatemala, including surveillance, assaults, disappearance and extra-judicial executions. The Guatemalan military and security forces have engaged in organized campaigns to intimidate those dedicated to the documentation of human rights violations and bringing those responsible for them to justice. Like the attacks against members of the Church, these attacks have also continued into the post-Peace Accord era. On June 13, 2002, Amnesty International, the International Commission of Jurists and Human Rights Watch issued a joint statement of concern regarding on-going attacks against this sector.

15. Guatemala inaugurated a new democratically-elected president, Jorge Serrano, in January 1991. In May 1993, however, President Serrano (claiming to be frustrated by corruption) illegally dissolved the Congress and Supreme Court and tried to further restrict civil freedoms. In the face of strong protests by Guatemalan citizens and in the international community (including the United States), and in the face of unrest within the Guatemalan military ranks, Serrano's Fujimori-style "auto-coup" failed. In June 1993, following President Serrano's flight from the country, the Guatemalan Congress appointed the human rights ombudsman, Ramiro de Leon Carpio, as President. In January 1996, Guatemalans elected a new President, Alvaro Arzu Irigoyen, who was succeeded in January 2000 by President Alfonso Antonio Portillo Cabrera.

16. During the four decades of systematic human rights violations committed by the Guatemalan military and security forces, the U.S. government supported the Guatemalan military and security forces in a perceived fight against communism. Due to the strategic and ideological interest that the U.S. government had in Guatemala, throughout the years of armed confrontation, the U.S. failed to condemn, or seek to clarify, acts of violence committed by the Guatemalan military and government against U.S. citizens (or their family members). The U.S. government has also been reluctant to provide information at its disposal regarding those believed to be responsible for the crimes or regarding attempts to cover-up or distort the facts of reported cases, perhaps out of concern over negative publicity regarding alleged U.S. complicity in the cases, a desire to protect matters of foreign policy or national security, or claims that delicate intelligence operations (including confidential methods and sources) were at stake.

17. On March 30, 1995, in response to on-going frustration and concern regarding incomplete or non-responsive answers by U.S. government agencies, including the defendants, to requests for information under FOIA regarding human rights violations in Guatemala and growing public outcry regarding alleged torturers on the U.S. payroll, President Clinton directed the Intelligence Oversight Board ("IOB") to conduct a government-wide review of any existing intelligence concerning allegations of torture, disappearance, or death of U.S. citizens in Guatemala (or their family members) since 1984. According to the IOB, its charter was to review and report to the President in a confidential matter regarding intelligence activities it believes may be unlawful or contrary to Executive Order or Presidential Directive. In the final report on its year-long

investigation, the IOB described the Guatemala review to be "unprecedented as a publicly announced inquiry."

18. As part of its review, the IOB received reports on human rights violations in Guatemala from the Departments of State and Justice, the CIA, and the Department of Defense. These reports covered those agencies and their subordinate agencies, such as the NSA, the DIA, the Drug Enforcement Agency, and the Federal Bureau of Investigation. IOB investigators also conducted independent interviews in Guatemala and the U.S. related to cases under investigation.

19. In the report on its investigation, released in June 1996, the IOB concluded:

[a]s intelligence on the cases was reported to U.S. government officials, very little of it was shared with victims or their surviving family members. The IOB believes... that in such cases the United States should provide its citizens more information whenever possible. The Freedom of Information Act (FOIA) establishes the only legal requirement to provide such information, yet that process is often an unsatisfactory way through which to communicate the information to families and victims. The redactions necessary to protect sensitive information in documents released under FOIA naturally give the reader the impression - usually mistaken - that relevant information is being withheld. Further, the reader is usually given no indication as to the reliability of the information. Victims and family members who seek intelligence information outside the FOIA process, however, usually find that it is not within the authority of policy agencies, such as the State Department, to share intelligence originating in another agency, and that it is not within the intelligence agencies' charter to communicate directly with victims and families. We believe the State Department should demonstrate more initiative in seeking authorization from intelligence producers to share their intelligence in briefings (oral or written) to family members and victims. The briefings need not identify that the information came from intelligence, but they should attempt to convey some indication of its reliability.

20. The IOB also highlighted specific cases that it had reviewed which in its opinion had received inadequate responses to FOIA requests, including that of plaintiff Meredith Larson, which it indicated were the result of "data searches that were overly narrow and the lack of a system that would allow [the agency] to provide more information without compromising its sources or methods."

22. Larson seeks documents regarding a stabbing attack she suffered in 1989, when she worked in Guatemala as an international human rights observer. Then twenty-three years old, Larson went to Guatemala to work for an international organization that provides nonviolent international peacekeeping in areas of violent conflict and repression, offering unarmed protective accompaniment to individuals, organizations, and communities threatened with violence and human rights abuses.

23. Larson wanted to work as an international human rights observer in Guatemala because she strongly believed in the importance of the advancement of human rights. On December 20, 1989, around 7:00 p.m., Larson and two Canadian colleagues were walking toward the organization's home office in Guatemala City. Approximately one block before reaching the house, two men rushed the three human rights observers and attacked them with knives. One lunged at Ms. Larson's chest with his knife.

24. Larson screamed and put her arms out in front of her to block her body. She swung her bag at him and started to run. The attackers never asked Larson or her colleagues for their cash or any other possessions, nor did they attempt to take her bag from her when she tripped and fell in an attempt to escape. Larson ultimately made it back to her house and was hospitalized later that night. She sustained knife wounds to her chest and left arm and suffered nerve damage to her arm.

25. Prior to this attack, her organization received death and bomb threats in May 1989, and in August 1989, its offices were bombed. A demolitions expert from the police told her organization that the grenades were U.S.-made. The bombing occurred minutes apart from a bombing of the offices of the *Grupo de Apoyo Mutuo* (GAM), a prominent Guatemalan human rights organization whose offices were located in an adjacent neighborhood.

26. As of this date, no one has been arrested nor in any way charged or identified with the attack against Larson or her co-workers, nor with the threats against and bombing of her organization. Immediately after the attack, then United States Ambassador Thomas Stroock told Larson's organization that he suspected that a faction of right-wing extremists attempting to destabilize the government of Vinicio Cerezo was responsible for the attack. Shortly thereafter, however, a religious delegation reported to the organization and Larson that Ambassador Stroock told them that the attack was not political but had been a "street crime of passion"; as the delegation leader recalled it, the Ambassador indicated that it was " "Latin men getting excited over North American women." "

27. In 1996, the President's Intelligence Oversight Board ("IOB") provided Larson with a declassified, formerly "SECRET" document that indicated that the "Special Operations" section of the D-2 (Guatemalan Army Directorate of Intelligence) was responsible for the bombing of her organization. The IOB report also disclosed that the CIA had maintained a close liaison relationship with the D-2, a unit widely known for its extensive human rights abuses in Guatemala. Ironically, one of the stated reasons for the CIA's liaison relationship with the D-2 was to "[protect] US citizens at risk."

28. Another document released by the IOB indicated that a right-wing extremist with ties to the military, Lionel Sisniega Otero, was responsible for the bombing. These documents were provided to Larson in conjunction with a voluntary declassification by the IOB. Larson never received this document through her FOIA request.

COUNT ONE

29. Plaintiff repeats and reallages paragraphs 1 through 28 as if fully set forth herein.

30. By letter dated July 21, 1997, Larson, through counsel, submitted a FOI/PA request to the DoD seeking seeking information regarding the incident in which she was stabbed in 1989, or related to the threats against or bombing of the human rights organization for which she worked.

31. By letter dated August 23, 1998, Larson, through counsel, submitted a letter to the DoD appealing its inaction on the request.

32. DoD responded by stating that it had received Larson's request, but provided no further substantive response.

33. DoD has failed to comply with the requisite statutory periods that govern compliance under the FOI/PA. Therefore, DoD has wrongfully withheld documents from Larson

34. Larson has constructively exhausted her administrative remedies as the DoD has not issued a formal determination regarding her FOI/PA request.

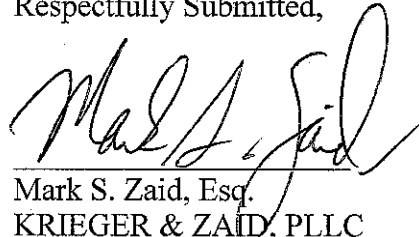
PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that this Court:

(1) Order defendant DoD to disclose the requested records in their entireties and make copies available to Larson;

- (2) Grant expedited processing, or otherwise expedite this action in every way pursuant to 28 U.S.C. § 1657(a);
- (3) Award plaintiff her costs and reasonable attorney's fees incurred in this action; and
- (4) Issue a written finding pursuant to § 552(a)(4)(F) that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, and refer this matter to the Office of the Special Counsel for a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding; and
- (5) Grant such other relief as this court may deem just and proper.

Respectfully Submitted,



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